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G.N., Appellant)	
)	
and)	Docket No. 17-0917
)	Issued: September 7, 2017
DEPARTMENT OF THE AIR FORCE, AIR)	
FORCE NATIONAL GUARD, Phoenix, AZ,)	
Employer)	
)	

Case Submitted on the Record

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On March 20, 2017 appellant, filed a timely appeal from a February 15, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

The issue is whether appellant has more than four percent binaural (both ears) hearing loss, for which he previously received a schedule award.

On May 19, 2015 appellant, then a 56-year-old retired automotive mechanic supervisor, filed an occupational disease claim (Form CA-2) alleging permanent hearing loss due to

¹ 5 U.S.C. § 8101 *et seq.*

exposure at work. He first became aware of his hearing loss and realized that it was causally related to his federal employment on April 1, 1995. Appellant was last exposed to conditions alleged to have caused his disease or illness on December 31, 2014 which was the date of his retirement.

In a May 15, 2015 narrative statement, appellant indicated that he had retired from the employing establishment on December 31, 2014 with 29 years of service. He advised that he participated in annual employing establishment testing for hearing loss. In 2005 appellant was informed that he had a significant shift in his hearing loss and had bilateral sensorineural hearing loss. From August 1985 to May 1994 he worked for the State of Arizona as a base building maintenance worker. Appellant was exposed to noise from air condition compressors, base electrical systems, facility generators, and air conditioning equipment for two to four hours a day. Hearing protection was worn. From August 1985 to December 2014 appellant worked as a National Guardsman and performed various duties one weekend a month and two weeks a year. From May 1994 to February 2002 he worked as a power support system mechanic. Appellant was exposed to noise from diesel generators, gas turbine air carts, diesel driven hydraulic carts, electrical compressors, power tools, and instruments and test equipment for generators. Noise levels were recorded from 81.22 decibels to 105 decibels up to six hours a day. Hearing protection was worn. From February 2002 to May 2009 appellant worked as an automotive mechanic. He was exposed to noise from power tools, gas engines and diesel engines. Noise levels were 98.4 decibels. Hearing protection was worn. From May 2009 to December 2014 appellant worked as an automotive mechanic supervisor. He was exposed to noise from cargo and refueling aircraft and ground equipment. Sound levels reached 105 decibels. Appellant wore earplugs and earmuffs.

The employing establishment provided information that included an August 28, 1996 Employer Annual Industrial Hygiene Survey, hearing conservation data sheets from 1994 to 2014, a noise dosimetry study, and employing establishment audiograms dated May 3, 1994 to January 11, 2014, which showed progressive bilateral sensorineural hearing loss.

By letter dated June 9, 2015, OWCP advised appellant and the employing establishment of the type of evidence needed to establish the claim.

OWCP received a master workplace exposure data summary dated May 21, 1992 and April 1, 1996 and an annual industrial hygiene survey dated March 11, 1994 and August 28, 1996.

Appellant submitted narrative statements dated June 17, 2015 further describing his hearing loss history. He noted military service from January 1978 to June 1979. From 1979 to 1985 appellant was a civilian employee who performed various construction jobs including setting concrete, welding, and elevator installation. He indicated that he wore earmuffs.

OWCP prepared an August 28, 2015 statement of accepted facts (SOAF), noting appellant's employment and noise exposure history. It indicated that the extent of the exposure to occupational noise during his tenure in his position as an automotive mechanic supervisor was not challenged by the employing establishment and that noise surveys provided by the employing establishment showed hazardous noise exposure. OWCP accepted that appellant was

exposed to occupational noise levels above 85 decibels for the periods indicated above. It advised that appellant filed a claim with the Department of Veterans Affairs for hearing loss related to his military service which was accepted for bilateral hearing loss and tinnitus.

On September 22, 2015 OWCP referred appellant, together with a SOAF, to Dr. Peter A. Weisskopf, a Board-certified otolaryngologist, for an otologic examination and an audiological evaluation. In a December 2, 2015 report, Dr. Weisskopf noted examining appellant and referenced appellant's exposure to workplace noise and indicated that appellant retired in 2014. He noted the earliest audiograms in 1994 demonstrated that appellant's hearing has worsened since his initial audiogram. Dr. Weisskopf advised that appellant's current audiometric testing demonstrates a prominent notch at 4,000 hertz (Hz), worse in the left ear at approximately 60 decibels. He opined that appellant's description of his work suggested that his hearing loss was noise related as he did not have any other related history that would provide this audiometric profile. Dr. Weisskopf noted findings and opined that there was no evidence of other medical conditions to explain appellant's hearing loss. He indicated that the audiogram performed on his behalf demonstrated an air conductive average of 21 decibels in the right ear with and 96 percent speech discrimination and the left ear had a 20 decibels average with 96 percent discrimination. Dr. Weisskopf determined that appellant had 5.6 percent monaural hearing loss in the right ear, 3.75 percent monaural hearing loss in the left ear, and 4.3 percent binaural loss.² He opined that given the audiometric profile and appellant's history, his hearing loss was at least in part due to noise exposure in his federal civilian employment. Appellant's audiometric profile shows a very prominent 4,000 Hz notch which is consistent with a noise-induced hearing loss. Dr. Weisskopf recommended hearing protection when around noise. He advised that appellant would benefit from hearing aids. Audiometric testing was performed for Dr. Weisskopf on October 15, 2015. Testing at the frequency levels of 500, 1,000, 2,000, and 3,000 cycles per second revealed the following: right ear 10, 15, 40, and 50 decibels; left ear 10, 25, 25, and 50 decibels.

On December 22, 2015 OWCP accepted appellant's claim for binaural noise-induced hearing loss due to noise exposure. It noted that the case had been forwarded to an OWCP medical adviser to calculate the percentage of hearing loss.

On December 30, 2015 an OWCP medical adviser reviewed Dr. Weisskopf's report of December 2, 2015 and the audiometric test of October 12, 2015. He concluded that, in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,³ (A.M.A., *Guides*), appellant had 4.1 percent binaural hearing loss and referenced an attached worksheet. The medical adviser noted that he reviewed the impairment rating provided by Dr. Weisskopf who noted that appellant sustained 4.3 percent binaural hearing loss. He advised that he was not sure how Dr. Weisskopf arrived at his calculations. The medical adviser reported that using the formula in the A.M.A., *Guides*, section 11.2F, appellant had a 4.1 percent binaural hearing loss. He indicated that the date of maximum medical improvement was October 12, 2015, the date of the last audiogram. The medical adviser recommended that hearing aids be authorized.

² Dr. Weisskopf did not explain how he calculated these percentages.

³ A.M.A., *Guides* (6th ed. 2009).

On January 5, 2016 appellant filed a claim for a schedule award (Form CA-7).

In an October 17, 2016 memorandum, OWCP requested that the medical adviser provide individual hearing loss percentages for both the right and left ears along with the binaural hearing loss percentage in order to calculate the schedule award.

In a report dated October 25, 2016, the medical adviser indicated that, pursuant to the A.M.A., *Guides*, Chapter 11, section 11.2, appellant had decibel sum hearing loss in the right ear of 115 and in the left ear of 110. Utilizing Table 11-2 on pages 252 and 253 of the A.M.A., *Guides*, he calculated 5.6 percent impairment of the right ear and 3.8 percent impairment of the left ear and 4.1 percent binaural hearing loss.

On January 27, 2017 appellant inquired about the handling of his compensation claim. He indicated that he submitted his paperwork in October 2015 and had been waiting to resolve matters pertaining to his impairment rating for hearing loss.

By decision dated February 15, 2017, OWCP found that appellant had 4.1 percent (rounded to four percent) binaural hearing loss. The award was for eight weeks of compensation, covering the period October 12 to December 6, 2015.

LEGAL PRECEDENT

The schedule award provisions of FECA⁴ and its implementing regulations⁵ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁶

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁷ Using the frequencies of 500, 1,000, 2,000, and 3,000 cycles per second, the losses at each frequency are added up and averaged.⁸ Then, the “fence” of 25 decibels is deducted because, as the A.M.A., *Guides* points out, losses below 25 decibels result in no impairment in the ability to hear everyday speech under everyday conditions.⁹ The remaining

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404 (1999).

⁶ *Id.* See also *Jacqueline S. Harris*, 54 ECAB 139 (2002).

⁷ A.M.A., *Guides* 250 (6th ed. 2009).

⁸ *Id.*

⁹ *Id.*

amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.¹⁰ The binaural loss is determined by calculating the loss in each ear using the formula for monaural loss; the lesser loss is multiplied by five, then added to the greater loss and the total is divided by six to arrive at the amount of the binaural hearing loss.¹¹ The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.¹²

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified.¹³ OWCP may follow the advice of its medical adviser or consultant where he or she has properly utilized the A.M.A., *Guides*.¹⁴

ANALYSIS

OWCP accepted that appellant sustained binaural noise-induced hearing loss due to noise exposure from his federal employment. An OWCP medical adviser applied OWCP's standardized procedures to the October 12, 2015 audiogram performed for Dr. Weisskopf in calculating permanent impairment. The Board notes that testing for the right ear at the frequency levels of 500, 1,000, 2,000, and 3,000 cycles per second revealed decibels losses of 10, 15, 40, and 50, respectively. These decibels were totaled at 115 and were divided by 4 to obtain an average hearing loss at those cycles of 28.75 decibels. The average of 28.75 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 3.75 percent hearing loss for the right ear which was multiplied by the established factor of 1.5 to compute a 5.625 percent monaural loss of hearing for the right ear. Testing for the left ear at the frequency levels of 500, 1,000, 2,000, and 3,000 cycles per second revealed decibels losses of 10, 25, 25, and 50 respectively. These decibels were totaled at 110 and were divided by four to obtain the average hearing loss at those cycles of 27.5 decibels. The average of 27.5 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to 2.5 which was multiplied by the established factor of 1.5 to compute a 3.75 percent hearing loss for the left ear. The lesser loss of 3.75 is multiplied by five, then added to the greater loss of 5.625

¹⁰ *Id.*

¹¹ *Id.*

¹² *Donald E. Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

¹³ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(f) (February 2013).

¹⁴ See *Ronald J. Pavlik*, 33 ECAB 1596 (1982).

and the total, 24.375, is divided by six to arrive at the amount of the binaural hearing loss of 4.0625 percent which is rounded to four percent binaural hearing loss.¹⁵

The Board has carefully reviewed Dr. Weisskopf's report of December 2, 2015, and notes that he did not adequately explain how his determination of 4.3 percent binaural hearing loss was reached in accordance with the relevant standards of the A.M.A., *Guides*.¹⁶ In his report, Dr. Weisskopf's calculated a 5.6 percent impairment of the right ear (when the correct amount was 5.625 percent as explained above) and 3.75 percent impairment of the left ear. He then arrived at 4.3 percent binaural hearing loss but did not provide his calculations in support of this determination. Thus, Dr. Weisskopf's finding of 4.3 binaural hearing loss was not reached in accordance with the relevant standards of the A.M.A., *Guides*.¹⁷ In any event, even a properly calculated 4.3 percent rating would be rounded down, as explained, to four percent binaural impairment.¹⁸ Consequently, Dr. Weisskopf's report does not provide any basis for greater impairment than the four percent impairment previously awarded.

The Board finds that the medical evidence of record does not establish that appellant has more than four percent binaural hearing loss. Under OWCP's standardized procedures, there is no basis on which to grant more than four percent binaural hearing loss.¹⁹

On appeal appellant asserts that his claim was not handled and processed properly and he questioned whether OWCP's medical adviser calculation of binaural hearing loss was accurate. As explained above, Dr. Weisskopf's October 12, 2015 audiogram supports that appellant has four percent binaural hearing loss. There is no other current medical evidence from a physician

¹⁵ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3(b) (January 2010) (results should be rounded down for figures less than .5 and up for .5 and over). As noted, *infra*, the medical adviser actually arrived at 4.1 percent binaural hearing loss as he rounded the monaural ratings from 5.625 percent to 5.6 percent, for the right ear, and 3.75 percent to 3.8 percent, for the left ear, in making his calculations under the standardized formula. However, OWCP procedures provide that, in calculating a binaural loss, percentages should not be rounded until the final percent for award purposes is obtained. *Id.* at 3.700.4(b)(2)(b) (January 2010). This was harmless error as rounding of the final binaural percentage yields four percent permanent binaural impairment under both calculations.

¹⁶ See *Tonya R. Bell*, 43 ECAB 845, 849 (1992).

¹⁷ It is well established that, when the examining physician does not provide an estimate of impairment conforming to the A.M.A., *Guides*, OWCP may rely on the impairment rating provided by a medical adviser. *J.Q.*, 59 ECAB 366 (2008).

¹⁸ See *supra* note 15.

¹⁹ The Board also notes that, if calculations based on the monaural hearing loss would result in greater compensation, then the monaural hearing loss calculations should be used. *E.S.*, 59 ECAB 249 (2007). Under FECA, the maximum award for binaural hearing loss is 200 weeks of compensation while the maximum number of weeks of compensation for hearing loss in one ear is 52 weeks. 5 U.S.C. § 8107(c)(13). In this case, the monaural rating, for the right ear, 5.626 percent, would be rounded to six percent which, when multiplied by 52 weeks, would yield 3.12 weeks of compensation. For the left ear, 3.75 percent would be rounded to four percent which, when multiplied by 52 weeks, would yield 2.08 weeks of compensation. 3.12 weeks plus 2.08 weeks equals 5.20 weeks. The binaural rating, four percent, yields eight weeks of compensation (.04 x 200). Since the binaural rating afforded a greater number of weeks of compensation, this was properly used as the basis for OWCP's schedule award.

in accordance with the relevant standards of the A.M.A., *Guides*, which establishes greater impairment. Thus, there is no basis for paying an increased schedule award.²⁰

Appellant may request a schedule award or increased schedule award at any time based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that appellant has no more than four percent binaural (both ears) hearing loss, for which he previously received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the February 15, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 7, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

²⁰ See *A.M.*, Docket No. 09-1895 (issued April 23, 2010) (the terms of FECA are specific as to the method and amount of payment of compensation; neither OWCP nor the Board has the authority to, enlarge upon the terms of FECA, nor to make an award of benefits under any terms other than those specified in the statute).